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Lim Siew Hoon v Low Cheng Lee (Sukdev Singh a/l Harcharan Singh, proposed intervener)

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HIGH COURT (PENANG) — ORIGINATING SUMMONS NO PA-24NCvC-518–08 OF 2021
KENNETH ST JAMES JC
30 JUNE 2022

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Civil Procedure — Intervener — Right to intervene — proposed intervener filed application to intervene in originating summons after prohibitory order and order for sale of property had been granted — Whether requirements of O 15 r 6(2)(b) of Rules of Court 2012 were satisfied by proposed intervener — Whether proposed intervener had direct legal interest in property — Whether proposed intervener should be permitted to intervene in originating summons — Rules of Court 2012 O 15 r 6(2)(b)

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The applicant had obtained judgment in default of appearance ('JIDA') against the respondent and to execute the JIDA, the applicant filed the present originating summons ('the OS') to obtain prohibitory order ('the PO') on the respondent's property ('the property'). The proposed intervener argued that he had granted a friendly loan to the respondent and as a security for the said loan, the respondent and the proposed intervener had entered into a sale and purchase agreement ('the SPA') of the property. Moreover, there was a pending suit ('Suit 192') in relation to this matter before the High Court. For these reasons, the proposed intervener filed the present application to intervene ('the application') pursuant to O 15 r 6(2)(b) of the Rules of Court 2012 ('the ROC'). The problem here was that the OS proceedings had been concluded whereby the order for sale ('the OFS') of the property had been granted by the court. The main question in the present application was whether the proposed intervener should be permitted to intervene in this OS proceedings. The sub-issues arose were: (a) whether there was a proceeding left in the present OS for the proposed intervener to intervene; (b) whether the requirements of O 15 r 6(2)(b) of the ROC were satisfied by the proposed intervener; and (c) whether the proposed intervener had direct legal interest in the property.

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Held, dismissing the application with costs of RM3,000 to be paid by the proposed intervener to the applicant and the respondent forthwith subject to allocatur:

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(1) As the court was bound by the authority of *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622 ('Staghorn'), on this ground alone, the court

dismissed the proposed intervener's application to intervene. The court in this OS proceedings had no jurisdiction to grant the proposed intervener an order for him to intervene because there was no proceeding for the proposed intervener to intervene in. It was pertinent to note here that the proposed intervener, by prayer 4 in his application, prayed for the right to show up at the hearing of this OS to be heard. But this OS was already heard and disposed of. Following the case of *Staghorn*, there was no issue left to be determined in this OS (see paras 13–14).

(2) The court found that the proposed intervener's presence in this OS was not necessary to determine whether the PO should have been granted or not granted. Further, the court did not find that the PO materially affects the proposed intervener's right to his reliefs and remedies in Suit 192 considering that his cause in Suit 192 was not yet decided. The proposed intervener's ultimate purpose was to stop the property from being auctioned. His intention was to set aside the PO. He had already applied to set aside the OFS, and his application was pending. To allow the proposed intervener to put into motion this series of proceedings, would be to re-open the already-determined cause between the applicant and the respondent in this OS. It would also have the effect of a stay of, or at the very least a delay in, the applicant's execution proceeding against the respondent. The applicant should be permitted to enjoy the fruits of his litigation, without being adversely affected by the proposed intervener who was a non-party who had no rights in the applicant's cause against the respondent. Therefore, the proposed intervener had not satisfied the requirements of O 15 r 6(2)(b) of the ROC (see paras 15, 19, 21 & 23–24).

(3) For the proposed intervener to be heard on his application to intervene, the proposed intervener must first demonstrate that he had a direct legal interest in the property. In the present case, the dispute between the proposed intervener and the respondent was about the money lent and the repayment of it. It was not actually about selling or transferring the property to the proposed intervener, to ultimately make the proposed intervener the owner. As was held in the Court of Appeal case of *Lekchumanan a/l Suppiah & Anor v Ravi a/l Raju* [2016] MLJU 1316, the friendly loan agreement was the primary contract. The court therefore held that the proposed intervener did not have the threshold direct legal interest in the property, such that the court should consider allowing him to intervene in this OS proceeding (see paras 25, 27 & 32–35).

[Bahasa Malaysia summary

Pemohon telah memperoleh penghakiman ingkar kehadiran ('PIK') terhadap responden dan untuk melaksanakan PIK tersebut, pemohon memfailkan saman pemula semasa ('SP') untuk mendapatkan perintah larangan ('PL') ke atas harta responden ('harta tersebut'). Pencelah yang dicadangkan berhujah

bahawa dia telah memberikan pinjaman persahabatan kepada responden dan sebagai jaminan untuk pinjaman tersebut, responden dan pencelah yang dicadangkan telah memeterai perjanjian jual beli ('PJB') bagi hartanah tersebut. Selain itu, terdapat saman yang belum selesai ('Saman 192') berhubung perkara ini di hadapan Mahkamah Tinggi. Atas sebab-sebab ini, pencelah yang dicadangkan memfailkan permohonan semasa untuk mencelah ('permohonan') menurut A 15 k 6(2)(b) Kaedah-Kaedah Mahkamah 2012 ('KKM 2012'). Masalahnya di sini ialah prosiding SP telah dimuktamadkan di mana perintah penjualan ('PP') harta tersebut telah diberikan oleh mahkamah. Persoalan utama dalam permohonan ini ialah sama ada pencelah yang dicadangkan harus dibenarkan untuk mencelah dalam prosiding SP ini. Sub-isu yang timbul ialah: (a) sama ada terdapat prosiding yang tinggal dalam SP semasa untuk pencelah yang dicadangkan mencelah; (b) sama ada keperluan A 15 k 6(2)(b) KKM 2012 telah dipenuhi oleh pencelah yang dicadangkan; dan (c) sama ada pencelah yang dicadangkan mempunyai kepentingan undang-undang langsung dalam harta tersebut.

Diputuskan, menolak permohonan dengan kos sebanyak RM3,000 dibayar oleh pencelah yang dicadangkan kepada pemohon dan responden dengan kadar segera tertakluk kepada alokatur:

(1) Memandangkan mahkamah terikat dengan autoriti *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622 ('Staghorn'), atas alasan ini sahaja, mahkamah menolak permohonan pencelah yang dicadangkan untuk mencelah. Mahkamah dalam prosiding SP ini tidak mempunyai bidang kuasa untuk memberikan pencelah yang dicadangkan perintah untuk dia mencelah kerana tiada prosiding bagi pencelah yang dicadangkan untuk mencelah. Adalah penting untuk diperhatikan di sini bahawa pencelah yang dicadangkan, melalui permohoanan keempat dalam permohonannya, memohon hak untuk hadir dalam pendengaran SP ini untuk didengari. Tetapi SP ini sudah didengari dan dilupuskan. Mengikut kes *Staghorn*, tiada isu yang tinggal untuk ditentukan dalam SP ini (lihat perenggan 13–14).

(2) Mahkamah mendapati bahawa kehadiran pencelah yang dicadangkan dalam SP ini tidak diperlukan untuk menentukan sama ada PL tersebut sepatutnya diberikan atau tidak diberikan. Selanjutnya, mahkamah tidak mendapati bahawa PL tersebut menjejaskan secara material hak pencelah yang dicadangkan untuk mendapatkan relif dan remedinya dalam Saman 192 memandangkan kausanya dalam Saman 192 belum diputuskan. Tujuan utama pencelah yang dicadangkan adalah untuk menghalang harta tersebut daripada dilelong. Niatnya adalah untuk mengenetepikan PL tersebut. Dia telah pun memohon untuk mengenepikan OFS, dan permohonannya belum selesai. Untuk membenarkan pencelah yang dicadangkan untuk melaksanakan siri prosiding ini, adalah sama dengan

membuka semula kausa yang telah ditentukan antara pemohon dan responden dalam SP ini. Ia juga akan mempunyai kesan penangguhan, atau sekurang-kurangnya kelewatan, prosiding pelaksanaan pemohon terhadap responden. Pemohon harus dibenarkan menikmati hasil litigasinya, tanpa terjejas teruk oleh pencelah yang dicadangkan yang merupakan bukan pihak yang tidak mempunyai hak dalam kausa pemohon terhadap responden. Oleh itu, pencelah yang dicadangkan tidak memenuhi keperluan A 15 k 6(2)(b) KKM 2012 (lihat perenggan 15, 19, 21 & 23–24).

(3) Untuk didengari dalam permohonannya untuk mencelah, pencelah yang dicadangkan perlu terlebih dahulu menunjukkan bahawa dia mempunyai kepentingan undang-undang secara langsung dalam harta tersebut. Dalam kes ini, pertikaian antara pencelah yang dicadangkan dan responden adalah mengenai wang yang dipinjamkan dan pembayaran balik wang tersebut. Ia sebenarnya bukan tentang menjual atau memindahkan harta tersebut kepada pencelah yang dicadangkan, untuk akhirnya menjadikan pencelah yang dicadangkan sebagai pemilik. Seperti yang telah diputuskan dalam kes Mahkamah Rayuan *Lekchumanan a/l Suppiah & Anor v Ravi a/l Raju* [2016] MLJU 1316, perjanjian pinjaman persahabatan merupakan kontrak utama. Oleh itu mahkamah berpendapat bahawa pencelah yang dicadangkan tidak mempunyai ambang kepentingan undang-undang langsung dalam harta tersebut yang membolehkan mahkamah untuk mempertimbangkan bagi membenarkannya mencelah dalam prosiding SP ini (lihat perenggan 25, 27 & 32–35).]

Cases referred to

Bank Pertanian Malaysia Bhd v Rampai Maluri Sdn Bhd (Ab Rahim bin Ghalim, proposed intervener) [2020] MLJU 2203, HC (refd)

Dato' Dr Haji Mohamed Haniffa bin Haji Abdullah & Ors v Koperasi Doktor Malaysia Bhd & Ors and another appeal [2008] 3 MLJ 530; [2008] 3 CLJ 323, CA (folld)

Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals [2008] 2 MLJ 622; [2008] 2 CLJ 121, FC (folld)

Lekchumanan a/l Suppiah & Anor v Ravi a/l Raju [2016] MLJU 1316; [2017] 5 CLJ 168, CA (folld)

Securities Commission Malaysia v Wong Shee Kai & Ors (Bright Packaging Industry Bhd, proposed intervener) [2021] MLJU 324; [2021] 5 CLJ 411, HC (folld)

Legislation referred to

Rules of Court 2012 O 15 rr 6(2), 6(2)(b)

Eric Chee (Louis Goh & Co) for the applicant.

Michelle Neow (Ros, Lee & Co) for the respondent.
Eng Khin Hock (Stephen & Co) for the proposed intervener.

Kenneth St James JC:

[1] The applicant entered a judgment in default of appearance ('JIDA') against the respondent for RM251,400 in July 2021. The JIDA is not set aside.

[2] The applicant then proceeded to execute on the JIDA by filing this originating summon ('OS'). It is important to note that this OS prayed for a prohibitory order ('PO') on the property known as Lot 2600 ('Property'). The PO was granted in August 2021. So, this OS proceeding had already concluded.

[3] The applicant had also gotten, in January 2022, an order for sale ('OFS'), to sell the property to satisfy the judgment debt. The OFS was given in another proceeding: Execution Suit 36–6–10 of 2021.

[4] The proposed intervener's case is this. He lent RM500,000 to the respondent. There was a friendly loan agreement to evidence the loan. As security for the loan, the proposed intervener and the respondent signed a sale and purchase agreement ('SPA') for the property. If the respondent failed to pay back the loan to the proposed intervener on time, the property was to be transferred to the proposed intervener. The purchase price would be deemed to be paid by the RM500,000 that was lent to the respondent.

[5] The respondent failed to repay the loan. The respondent also refused to transfer the property to the proposed intervener.

[6] The proposed intervener sued the respondent in Writ Action 22NCVC-192–11 of 2021 ('the Suit 192'). The respondent disputes the proposed intervener's claim and is defending it. In fact, the respondent has mounted a counterclaim against the proposed intervener in Suit 192, asking for a declaration that the SPA was a sham agreement and for the caveat that the proposed intervener entered over the property to be removed.

[7] The proposed intervener then came into *this* OS and filed his application to intervene.

[8] Should the proposed intervener be permitted to intervene in this OS proceeding?

A THE WORDS OF O15 R 6(2)(b)

[9] The proposed intervener makes his application under O15 r 6(2)(b). The relevant parts of O15 r 6 are set out here:

B 6 Misjoinder and non-joinder of parties (O 15 r 6)

(1) A cause or matter shall not be defeated by reason of the misjoinder or non-joinder of any party, and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

C (2) Subject to this rule, *at any stage of the proceedings* in any cause or matter, the Court may *on such terms as it thinks just* and either of its own motion or on application:

(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

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(b) *order* any of the following persons *to be added as a party*, namely —

(i) any person who ought to have been joined as a party or *whose presence* before the Court *is necessary* to *ensure that all matters in*

E *dispute in the cause or matter may be effectually and completely determined and adjudicated upon*; or

(ii) *any person between whom and any party* to the cause or matter there may exist *a question or issue* arising out of or relating to or *connected with any relief or remedy claimed in the cause or matter which*, in the

F opinion of the Court, *would be just and convenient to determine* as between him *and that party as well as between the parties* to the cause or matter.

First: The issue of jurisdiction. Is there a proceeding left in this os for the proposed

G *intervener to intervene in?*

[10] The Federal Court in *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622; [2008] 2 CLJ 121 (FC) propounded that where there is an application to

H intervene in a proceeding, for the purpose of setting aside an OFS (or a PO, as it is here) — but the OFS/PO is already made and perfected — *there is no longer a proceeding for the proposed intervener to intervene in*.

[11] The Federal Court through His Lordship Abdul Hamid Mohamad CJ

I held:

[59] ... an application for leave to intervene in order to set aside an order for sale by a party not already a party to the proceedings must be made under O 15 r 6 of the RHC 1980. The application may be made 'at any stage of the proceedings' *meaning before judgment, otherwise the proceedings have concluded and there is no longer a*

proceeding in existence for the party to intervene in ... (Emphasis added.) A

[12] And per His Lordship Abdul Aziz Mohamad FCJ, the Federal Court held:

[114] Now the issue of jurisdiction under O 15 r 6 does not hang upon the words 'At any stage of the proceedings' alone. It is not those words only that indicate that an order for the addition of a party in a cause of matter under r 6(2)(b) is to be made only in a cause or matter that is extant and alive. The entire wording of para (b) also so indicates, and with greater force. It shows that *the addition of a party is intended to achieve a comprehensive and global resolution of the cause or matter. The wording looks to the future outcome of the cause or matter. The addition of the party to be added is a contribution to the future outcome*. It follows from the entire wording of para (b), even without the words 'At any stage of the proceedings', that *the addition of a party can only be made in a cause or matter that has not been concluded and brought to an end*. The wording of para (b) *would not enable a person to come in and be added as a party to undo what has already been done or decided in a cause or matter* ... B C D

...

[118] Although the problem was one of the addition of a party to an appeal to this court, the rule that the Privy Council (in *Pegang Mining Company Ltd v Choong Sam & Ors* [1969] 2 MLJ 56; [1968] 1 LNS 96) considered was the rule about the addition of a party to an action in the High Court, namely, O 16 r 11 of the Rules of the Supreme Court 1957, which have been repealed by the present Rules of the High Court 1980. This was because, as Lord Diplock said at p 55B (right), this court had the same power to add a party to an appeal as the High Court had under that rule to add a party to an action. The relevant part of O 16 r 11 was as follows: E

> The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order ... that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary *in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter*, be added. F G

It was very much akin to the present O 15 r 6(2)(b), sub-para (i). Like O 15 r 6(2)(b), it was *a rule for the addition of a party to a cause or matter that was yet to be adjudicated*. This can be readily seen from the words of the adjectival clause 'who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter' describing the party to be added, which Lord Diplock said at p 55 C (right) the party to be added must be in order to come within the words of the rule. There were also the words 'at any stage of the proceedings' which existed in the rule as they exist in O 15 r 6(2)(b). Order 16 r 11 was not intended to enable a party to be added to a cause or matter that had been adjudicated in order to upset the decision that had been made in it. (Emphasis added.) H I

[13] As I am bound by the authority of *Hong Leong Bank v Staghorn*, on this

ground alone, I am to dismiss the proposed intervener's application to intervene. I hold that this court, in this OS proceeding, has no jurisdiction to grant the proposed intervener an order for him to intervene. There is no proceeding for the proposed intervener to intervene in.

[14] It is pertinent to note here that the proposed intervener, by prayer 4 in his application, prays for the right to show up at the hearing of this OS to be heard. But this OS was already heard and disposed of. Following *Staghorn*, there is no issue left to be determined in this OS.

Are the requirements of O 15 r 6(2)(b) met by the proposed intervener?

[15] But, if I should have decided that this court, in this OS proceeding for a PO nevertheless has the jurisdiction to hear and determine the proposed intervener's application to intervene, then I must consider whether the proposed intervener has satisfied the requirements of O 15 r 6(2)(b).

[16] In reading O 15 r 6(2)(b), I am guided by the observations of the Court of Appeal on whether the proposed intervener should be allowed to intervene, in *Dato' Dr Haji Mohamed Haniffa bin Haji Abdullah & Ors v Koperasi Doktor Malaysia Bhd & Ors and another appeal* [2008] 3 MLJ 530; [2008] 3 CLJ 323. The Court of Appeal observed:

> [5] In resolving that question, I begin, as I must, with RHC O 15 r 6(2)(b). It reads:
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> > Two observations are called for. In the first place, it is important to note that the rule permits intervention on two separate grounds. In sub-para (i) it enables intervention where *the presence of a party* before the court *is necessary*. In sub para (ii) intervention is enabled where *a party* to an action *claims relief or a remedy which will materially affect the non-party-intervener's rights*. In such circumstances, the court is empowered to permit intervention *if it forms the view that to do so will be just and convenient* ...

[17] Is the presence of the proposed intervener in this OS necessary, to ensure that all matters in dispute in this OS is effectively and completely determined? I hold that it is not. I reiterate that this OS was to obtain the PO. The PO has been granted. It was granted to the applicant, who filed suit against the respondent. The applicant's cause in that suit was unrelated to the property. The applicant got a JIDA. The applicant chose to execute the judgment by selling the property to satisfy the judgment debt.

[18] The proposed intervener's cause against the respondent in Suit 192 is for: (1) the specific performance of the SPA ie to transfer the rights over the property to the proposed intervener; (2) the sum of RM700,000 (Note: this RM700,000 is *not* the sum lent to the respondent); and (3) damages. The proposed intervener's rights and thus his cause against the respondent is not

determined yet. Suit 192 is still pending and yet to be heard. A

[19] I hold that the proposed intervener's presence in this OS is not necessary to determine whether the PO should have been granted or not granted. The proposed intervener has not satisfied this prerequisite factor, to enable this court to consider whether it is just and convenient to let the proposed intervener intervene in this OS. B

[20] The relief sought in this OS is the PO. Does the relief claimed in this OS ie the PO, *materially affect* the proposed intervener's rights? The proposed intervener asserts that it does. the proposed intervener submits that if the property is sold, he can no longer get specific performance of the SPA to transfer the property to him. C

[21] I am not inclined to hold that the PO materially affects the proposed intervener's right to his reliefs and remedies in Suit 192. His rights and thus his cause in Suit 192 are not yet decided. Ours is not a circumstance where the proposed intervener is already successful in Suit 192 and the court has already granted him an order for specific performance to sell and transfer the property to him. If this had been the case, then I would be persuaded that the PO will materially affect the proposed intervener's rights over the property. But this was not the case. D E

[22] Even if I give the benefit of the doubt to the proposed intervener, and accept that the PO materially affects the proposed intervener's rights, I would *still* have to be persuaded that it is just and convenient to allow the proposed intervener to intervene in this OS. F

[23] The proposed intervener's ultimate purpose is to stop the property from being auctioned. His intention is to set aside the PO. He has already applied to set aside the OFS, and his application is pending. To allow the proposed intervener to put into motion this series of proceedings, would be to *re-open the already-determined cause* between the applicant and the respondent in this OS. G H

[24] It would also have the effect of a stay of, or at the very least a delay in, the applicant's execution proceeding against the respondent. The applicant should be permitted to enjoy the fruits of his litigation, without being adversely affected by the proposed intervener — a non-party who had no rights in the applicant's cause against the respondent. I

For the proposed intervener to be heard, what interest over the property must the proposed intervener have?

[25] Under case law, for the proposed intervener to be heard on his application to intervene, the proposed intervener must first demonstrate that he has a *legal interest* in the property (the subject matter of this OS) — *Bank Pertanian Malaysia Bhd v Rampai Maluri Sdn Bhd (Ab Rahim bin Ghalim, proposed intervener)* [2020] MLJU 2203.

[26] In *Bank Pertanian*, His Lordship Atan Mustaffa Yussof Ahmad JC (as he was then), said this:

> [27] However, to be allowed to intervene, the proposed intervener must satisfy *the legal test of having a legal interest in the subject matter* of the proceedings first and foremost ...
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> ...
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> [29] It is clear to me, that the proposed intervener's right to be heard, as perceived by the proposed intervener does not override the requirement of the proposed intervener *having legal interest in the subject matter* of this proceedings.

[27] Further, the proposed intervener must not only have a legal interest in the property, he must have a *direct legal interest* in the property before he will be considered to be allowed to intervene.

[28] I am guided by the summary of His Lordship Anand Ponnudurai JC (as he was then) in *Securities Commission Malaysia v Wong Shee Kai & Ors (Bright Packaging Industry Bhd, proposed intervener)* [2021] MLJU 324; [2021] 5 CLJ 411, where he said:

> [31] The principles on intervention are well settled and can be summarised as follows:
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> (i) in determining whether a party may be added as an intervener, the test to be adopted is whether the proposed intervener's 'legal interests', ie, his rights against or liabilities to any party to the action in respect of the subject matter of the action, would be directly affected by any order or judgment which might be made in the action. Commercial interests alone would not be sufficient to allow intervention. This was held in the Supreme Court case of *Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1992] 2 MLJ 63; [1992] 2 CLJ 1153; [1992] 1 CLJ Rep 344 ('Tohtonku'), where the landmark Privy Council decision of *Pegang Mining Company Ltd v Choong Sam & Ors* [1969] 2 MLJ 52; [1968] 1 LNS 96 ('Pegang Mining') was cited:
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> > It is settled law, on the authorities, that a party may be added if his 'legal interests' will be affected by the judgment in the action but not if his commercial interests alone would be affected: per Lord Diplock in *Pegang Mining Co Ltd v Choong Sam & Ors* at pp 55–56. In that case, the Privy Council had formulated the test to determine whether a party's interests in the matter are 'legal' or merely 'commercial' in the following words (at p 56):

A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in this action?

(ii) *for sufficient interest to justify intervention, a direct legal interest must be established. An indirect or commercial interest does not satisfy the requirement* (see Federal Court decision of *Chong Fook Sin v Amanah Raya Bhd & Ors* [2011] 1 MLJ 721; [2010] 7 CLJ 917 ('Chong Fook Sin'));

(ii) the burden is on the proposed intervener to satisfy the court that the requirements set out in O 15 r 6(2) of the ROC have been met before intervention can be allowed (see: High Court decision of *Kumarasamy proposed intervenerllai Govindaraju & Ors v Vijayasundaram Sambantham Mudaliar & Anor; Vegadachalam Palaniappen (Intervener)* [2010] 4 MLJ 567; [2009] 1 LNS 1722).

[29] I now go on to consider whether the proposed intervener has a direct legal interest in the property.

Where there is a friendly loan agreement, coupled with a spa over land to secure the repayment of the loan, does the lender have a direct legal interest in the land?

[30] To answer this question, I go to the analysis, and the answers provided, by the Court of Appeal in the case of *Lekchumanan a/l Suppiah & Anor v Ravi a/l Raju* [2016] MLJU 1316; [2017] 5 CLJ 168. The judgment was rendered through His Lordship Varghese George JCA.

[31] The facts in *Lekchumanan* are, to an extent, similar to the facts that the proposed intervener intends to bring into this OS with his application to intervene. There was money lent by A to B. (A is the proposed intervener in our proceeding, and B is the respondent.) The loan transaction was documented by two agreements — a friendly loan agreement and a SPA of B's land to A. The SPA is a form of security for the repayment of the loan. In addition, B handed to A the issue document of title to the land (as an added form of security for A). B also signed a memorandum of transfer (MOT) of B's land in A's favour.

[32] In deciding on the disputed rights and obligations between A and B, the Court of Appeal held, among other things, that:

(a) the High Court should have decided which of the two agreements — the friendly loan agreement or the SPA — was 'the dominant or prevalent contract' between the parties;

(b) the friendly loan agreement gave A rights *in personam* against B, and the SPA gave A rights *in rem* over the land. But since the SPA is only a security for the repayment of the friendly loan, *the friendly loan agreement was the primary contract* between the parties;

(c) the nature of the contract between A and B was fundamentally a loan transaction. A was the lender, and B was the borrower;

(d) the SPA, the MOT, and the handing over of the Title to A — were secondary in nature; and

(e) A had no 'legally recognised interest in the land', nor any 'right to deal with the land', since the documentation relating to the land was only intended to be security for the loan.

[33] I am guided and bound to follow the Court of Appeal's analysis and decision, particularly about the proposed intervener's interest in the property.

[34] The dispute between the proposed intervener and the respondent is about the money lent and the repayment of it. It is not actually about selling or transferring the property to the proposed intervener, to ultimately make the proposed intervener the owner.

[35] I therefore hold that the proposed intervener does not have the threshold direct legal interest in the property, such that I should consider allowing him to intervene in this OS proceeding.

CONCLUSION

[36] On these grounds, I find that since the PO in this OS, and even the OFS, were already made and perfected, the proposed intervener cannot bring himself under O15 r 6(2)(b) for this court to decide whether to allow him to intervene in this OS proceeding. This OS proceeding has already concluded.

[37] In the event that jurisdiction is not at issue for the proposed intervener's application, I considered the requirements of O15 r 6(2)(b), and found that the proposed intervener has not satisfied those requirements.

[38] Further, I found that the proposed intervener does not have the requisite direct legal interest in the subject matter of this OS — the property — to persuade me to exercise the discretion to allow him to intervene in this OS proceeding.

[39] On any of these grounds, I dismiss the proposed intervener's application to intervene, with costs of RM3,000 each to be paid by the proposed intervener to the applicant and the respondent forthwith, and in any event by 14 June 2022. Costs are of course subject to the allocatur.

Application dismissed with costs of RM3,000 to be paid by proposed intervener to applicant and respondent forthwith subject to allocatur.

Reported by Dzulqarnain Ab Fatar